

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

AMIT DAHIYA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70494

Agency No. A95-402-148

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Amit Dahiya, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") affirmance of an Immigration Judge's ("IJ") denial of his applications for asylum and withholding of removal and for

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence an adverse credibility determination, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), and we grant in part and deny in part the petition for review.

Substantial evidence does not support the BIA’s adverse credibility finding. The BIA found that it was implausible that petitioner could obtain a passport after he had been arrested and that his father told police that he was in the state of Haryana. Because petitioner could have obtained a passport because he was never charged with a crime, and his father could have told police that he was in another state for any number of reasons, and improper speculation does not support an adverse credibility decision, the BIA’s adverse credibility finding is not supported. *See Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000).

Petitioner fails to establish a CAT claim because he did not show that it was more likely than not that he would be tortured if he was returned to India. *See Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001).

Accordingly, we grant the petition in part and remand to determine whether, accepting petitioner’s testimony as credible, he is eligible for asylum and withholding of removal. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED in part; DENIED in part.